IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.83 OF 2005

IN

CHAMBER SUMMONS NO.133 OF 2004

IN

TESTAMENTARY SUIT NO.48 OF 1989

1. Enid A. Hayden & another. ...Plaintiffs.

vs.

1. Anthony C.Henriques & others. ...Defendants.

Mr.R.B.Jaiswal, for Plaintiffs.

Mr.V.Manadiar, for Defendant nos.1 to 4 & 6.

Mr.A.K.Abhyankar i/b. R.N.Kachare, for Respondent no.5.

CORAM: D.K.DESHMUKH,J.

DATED: 14th September,2006.

P.C.:-

1. By this notice of motion taken out in the testamentary suit filed for grant of probate of the Will of the deceased, the applicants-plaintiffs are seeking interim orders in relation to the property which is alleged to have been left behind by the deceased. By my order dated 29th August,2006 passed in

Notice of motion no.30 of 2006 in Testamentary suit no.75 of 2005 in the case "Rupali Mehta Vs. Smt.Tina Narinder Sain Mehta" I have taken a view that Court cannot grant interim orders in relation to the property which is alleged to have been left behind by the deceased in a testamentary suit as a matter of course. In such a situation the appropriate remedy is to institute a suit for administration of the estate.

2. The learned Counsel appearing for petitioner relied on the judgment of the Madras High Court in the case of "Adapala Subba Reddy and another Vs. Adapala Andemma and others, AIR (38) 1951 Madras 393". Perusal of that judgment shows that that judgment is based on the provisions of Section 247 of the Indian Succession Act. In my order referred to above in the case of "Rupali Mehta Vs. Smt.Tina Narinder Sain Mehta" I have considered the provisions of Section 247 of the Indian Succession Act. In view of my order in the case of "Rupali Mehta" referred to above, the interim orders claimed in this notice of motion cannot be granted. The notice of motion is disposed of.